

H. B. 4569

(By Delegates Cowles, Kump and Folk)

[Introduced February 17, 2014; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §12-5B-1; §12-5B-2;
§12-5B-3; §12-5B-4; §12-5B-5; §12-5B-6; §12-5B-7 and §12-5B-8,
all related to oversight of law-enforcement agencies which
receive private property through forfeiture laws.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §12-5B-1; §12-5B-2;
§12-5B-3; §12-5B-4; §12-5B-5; §12-5B-6; §12-5B-7 and §12-5B-8, all
to read as follows:

ARTICLE 5B. FORFEITURE REPORTING ACT.

§12-5B-1. Purpose.

This bill provides legislators with information necessary for
basic oversight of law-enforcement agencies who obtain private

1 property under state and federal forfeiture laws. Properties which
2 may be seized and sold include, but are not limited to, money,
3 securities, negotiable instruments, vehicles and equipment.
4 Proceeds from sale of forfeited property are used to fund agency
5 activities. Reporting is required of property seized and forfeited
6 under, but not limited to, provisions of article two, chapter
7 twenty; article twenty-two-b, chapter twenty-nine; article seven,
8 chapter sixty-a; and article eight-c and article thirteen, chapter
9 sixty-one of this code.

10 **§12-5B-2. Definition of law-enforcement agency.**

11 "Law-enforcement agency" means any police force,
12 multijurisdictional task force, fire department, or other local,
13 county or state agency that has authority under state law or
14 operates in cooperation with a federal agency under federal law to
15 engage in seizure and forfeiture.

16 **§12-5B-3. Reporting requirement.**

17 (a) On an annual basis, each law-enforcement agency shall
18 report the following information about each individual seizure and
19 forfeiture completed by the agency under both state and federal
20 forfeiture laws:

21 (1) Data on seizures and forfeitures including the following:

22 (A) Date that currency, vehicles, houses or other types of
23 property were seized;

24 (B) Type of property seized, including year, make and model,

1 as applicable;

2 (C) Type of alleged crime associated with the seizure of the
3 property;

4 (D) Outcome of related criminal action, such as whether: (i)
5 No charges were brought; (ii) a plea bargain was reached; (iii) a
6 conviction was obtained; or (iv) an acquittal was issued;

7 (E) Type of forfeiture procedure: criminal forfeiture or civil
8 forfeiture;

9 (F) Type of civil forfeiture: administrative, judicial or
10 other;

11 (G) Venue of forfeiture case: administrative agency, small-
12 claims court, civil court, criminal court or other;

13 (H) Whether property owner was represented by an attorney in
14 the forfeiture case;

15 (I) Market value of the property seized;

16 (J) Gross amount received from the forfeiture;

17 (K) Total administrative and other expenses deducted as part
18 of the forfeiture process;

19 (L) Net amount received from the forfeiture;

20 (M) Disposition of property following seizure, such as whether
21 the property was: (i) Returned to the owner; (ii) destroyed; (iii)
22 sold after forfeiture; or (iv) retained after forfeiture;

23 (N) Date of the aforementioned disposition of property; and

24 (O) Whether the forfeiture resulted from an adoptive seizure.

1 An adoptive seizure occurs when one hundred percent of the
2 preseizure activity and related investigations are performed by the
3 state or local seizing agency before a request is made to the
4 federal government for adoption. There must be a state violation
5 and a federal basis for forfeiture in order for the seizure to be
6 an adoptive seizure. A seizure resulting from a joint
7 investigation or task force case is not an adoptive seizure.

8 (2) Data on expenditures of forfeiture funds by law-
9 enforcement agencies, including the following:

10 (A) Crime, gang and substance-abuse programs;

11 (B) Witness protection and victim reparations;

12 (C) Informant fees and buy money;

13 (D) Regular-time salaries, overtime pay and employee benefits
14 of prosecutors;

15 (E) Regular-time salaries, overtime pay and employee benefits
16 of law-enforcement agency personnel other than prosecutors;

17 (F) Professional or outside services, including services
18 related to auditing, court reporting, expert witnesses and other
19 court costs;

20 (G) Travel, meals and entertainment;

21 (H) Training and conferences;

22 (I) Other operating expenses including supplies;

23 (J) Vehicles purchased;

24 (K) Canines, firearms and equipment, such as tactical gear;

1 (L) Capital expenditures, such as furniture, computers and
2 office equipment; and

3 (M) Other uses of forfeiture proceeds.

4 (b) The State Auditor and the Joint Committee on Government
5 and Finance may require information not specified in this section
6 to also be reported.

7 (c) Each law-enforcement agency shall file with the State
8 Auditor the report required under subsection (a) for the law-
9 enforcement agency and the corresponding prosecutor's office. The
10 law-enforcement agency shall file separate reports for forfeitures
11 completed under state forfeiture law and federal forfeiture law. A
12 null report shall be filed by a law-enforcement agency that did not
13 engage in seizures or forfeitures during the reporting period.

14 **§12-5B-4. Standard form, data entry and aggregate report.**

15 (a) The State Auditor shall develop a standard form, process
16 and deadlines for electronic data entry for annual submission of
17 forfeiture data by law-enforcement agencies. The State Auditor
18 shall compile the submissions and issue an aggregate report of all
19 forfeitures in the state.

20 (b) By the first day of April of each year, the State Auditor
21 shall make available on its website the reports submitted by law-
22 enforcement agencies and its aggregate report. It shall distribute
23 printed copies of its aggregate report to legislators, other
24 government officials and the public upon request.

1 **§12-5B-5. Recommendations.**

2 The State Auditor shall include in its aggregate report
3 recommendations to the Legislature to improve forfeiture statutes
4 to better ensure that forfeiture proceedings are reported and
5 handled in a manner that is fair to crime victims, innocent
6 property owners, secured interest holders, citizens and taxpayers.

7 **§12-5B-6. Penalty for failure to report.**

8 The State Auditor shall include in the aggregate report
9 information on law-enforcement agencies not in compliance with this
10 article. The state shall withhold payment of any funds to those
11 agencies until compliance is achieved.

12 **§12-5B-7. Use of forfeiture proceeds to pay reporting costs.**

13 The State Auditor may recoup his or her costs by charging a
14 fee to law-enforcement agencies that engage in seizures or
15 forfeitures during the reporting period. Each law-enforcement
16 agency may use forfeiture proceeds to pay the cost of compiling and
17 reporting data under this article, including any fee imposed by the
18 State Auditor.

19 **§12-5B-8. Public disclosure.**

20 The data and reports compiled and prepared under this article
21 about completed forfeitures are public information under the
22 State's Freedom of Information Act, and are not exempted from
23 disclosure by section four, article one, chapter twenty-nine-b of
24 this code.

NOTE: The purpose of this bill is to provide legislators with information necessary for basic oversight of law-enforcement agencies who obtain private property under state and federal forfeiture laws. The information will be available to the public.

Article 5B is new; therefore, it has been completely underscored.